



August 4, 2015

An ALM Publication

## TEXAS

### TARRANT COUNTY

#### MOTOR VEHICLE

Cell Phone, Rear-ender

## Defendant was on cell phone just before rear-ender

<b>Amount:</b>	\$372,896.27
<b>Type:</b>	Verdict-Plaintiff
<b>State:</b>	Texas
<b>Venue:</b>	Tarrant County
<b>Court:</b>	Tarrant County District Court, 96th
<b>Injury Type(s):</b>	arm other-soft tissue other-chiropractic other-labrum; tear other-labrum; torn other-acromioplasty other-physical therapy other-steroid injection other-strains and sprains other-trigger point injection shoulder shoulder-rotator cuff(supraspinatus muscle/tendon, tear); injury (tear) (supraspinatus muscle/tendon, tear) surgeries/treatment-arthroscopy surgeries/treatment-debridement
<b>Case Type:</b>	Motor Vehicle - Cell Phone, Rear-ender
<b>Case Name:</b>	Meagan Stout v. Scott Simon, No. DC-096-264984-13
<b>Date:</b>	August 4, 2015
<b>Parties Plaintiff(s):</b>	Meagan Stout (Female, 24 Years)
<b>Plaintiff Attorney(s):</b>	Brian C. Hargrove; Bedford, TX, Chris Whitaker; North Richland Hills, TX.

<b>Plaintiff Expert(s):</b>	John McConnell ; M.D. ; Orthopedic Surgery; Greenville, TX called by: Chris Whitaker, Brian C. Hargrove
<b>Defendant(s):</b>	Scott Simon
<b>Defense Attorney(s):</b>	Nick G. Palmarozzi III; Hoagland, Farish & Palmarozzi; Irving, TX, for Scott Simon Jonathan Cheatham; Hoagland, Farish & Palmarozzi; Irving, TX, for Scott Simon
<b>Insurer(s):</b>	Farmers Insurance Group of Cos.

**FACTS:** On March 31, 2011, plaintiff Meagan Stout, 24, a customer service representative for a dry cleaner, was driving a 2001 Honda Accord on a freeway in North Richland Hills. It was around 7:15 p.m., and traffic was stop-and-go. Scott Simon rear-ended her. He was in a 2004 Lincoln LS, a mid-size sedan, and was on his cell phone arguing with his girlfriend just before the impact. The police report said Simon caused the accident. Stout claimed a shoulder injury. Stout sued Simon for following too closely, failing to control his speed or keep a proper lookout and driving while distracted by his cell phone. The judge granted a directed verdict in favor of Stout on liability.

**INJURY:** Stout's husband came to the scene and took her to the emergency room. Stout claimed multiple labral tears in her right (dominant) shoulder, as well as a 10 to 20 percent partial thickness tear of the distal supraspinatus tendon. She said that, when she heard Simon's tires squealing, she instinctively reached back to brace her nephew, who was in a child seat. Upon impact, she said, her shoulder was jammed into the back of the front passenger seat. The police report said she complained of right arm and shoulder pain at the scene.

At the emergency room, she was diagnosed with a sprained shoulder, but a subsequent MRI showed the supraspinatus tear.

From early April until October, she underwent physical therapy, chiropractic care, trigger point injections and steroid injections. In October, she was referred to an orthopedic surgeon, whom she first saw on Nov. 18. On Dec. 10, he performed arthroscopic rotator-cuff repair, labrum repair, debridement and acromioplasty. Stout's last treatment was May 9, 2012.

Her expert, the orthopedic surgeon, opined that the treatment and bills were reasonable and necessary; that the injuries were caused by the accident; that, within reasonable medical probability, Stout would need surgery at some point; that her condition would result in arthritis that otherwise would not have occurred till later or possibly would not have occurred at all; that her range of shoulder motion would be limited permanently; and that her future medical bills would be \$31,500 to \$35,500.

Stout claimed that she liked to ride on the back of her date's motorcycle and go on camping trips, but that she could no longer do so. She also claimed that she missed a family trip to Texas Motor Speedway.

In addition, she claimed that she was the favorite aunt of at least four of her 14 nieces and nephews and that she used to play on the monkey bars with them (they called her "Aunt Monkey"), but that she could no longer do so, nor play catch with her nephews, nor practice tumbling with her nieces.

She missed some work around the time of the surgery, but did not claim lost wages.

She claimed that, for a month after the surgery, she required assistance with bathing, dressing and brushing her hair and teeth.

Her paid or incurred medical bills were \$80,052.97. She also sought \$31,500 to \$35,500 in future medical bills, \$63,336 for past physical pain and mental anguish, \$63,336 for future physical pain and mental anguish, \$63,336 for past physical impairment, \$63,336 for future physical impairment, \$3,000 for past disfigurement and \$3,000 for future disfigurement.

Although the vehicles' bumpers sustained minimal damage, her car's frame was bent. Her car was totaled, with \$2,947 in damage.

The defense argued that the impact was minor and that Simon was going only 5 mph. Photos of Stout's car showed no visible damage. Photos of Simon's showed a bent front license plate only. Both vehicles were drivable after the accident.

The defense expressed doubt that the accident was substantial enough to cause Stout's shoulder injuries. The defense argued that Stout's injuries probably resulted from working at a dry cleaner and handing the garments to the customers. Also, the emergency room records made no mention of her reaching backward before the impact.

The defense also argued that, after the emergency room visit, she was referred to her providers by an attorney, and that those providers had letters of protection and a financial interest in the outcome of the case.

Defense counsel further emphasized that, at the time of trial, Stout had not treated since May 2012. He also said she missed rehabilitation appointments after the surgery.

The defense also noted that the MRI report did not say whether the supraspinatus tear was caused by the accident.

Defense counsel argued that Simon should be responsible for medical bills of \$12,119.50, which were the bills up to, but not including, the Nov. 18 surgical consultation.

Defense counsel argued that Stout did not meet her burden of proof on the other elements of damages; none of Stout's friends or family testified.

**RESULT:**

The jury awarded Stout \$372,896.27. Stout will also seek taxable costs and \$40,321.71 in prejudgment interest.

This was the first trial in the 96th Judicial District Court at the new Tarrant County Courthouse.

This was the second trial of this case. In the first, the judge declared a mistrial after Stout accidentally mentioned that Simon was wearing an ankle monitor for a prior DWI.

**MEAGAN STOUT**

\$80,053 Personal Injury: Past Medical Cost  
\$33,500 Personal Injury: Future Medical Cost  
\$63,336 Personal Injury: Past Physical Impairment  
\$63,336 Personal Injury: Future Physical Impairment  
\$3,000 Personal Injury: Past Disfigurement  
\$3,000 Personal Injury: Future Disfigurement  
\$63,336 Personal Injury: past physical pain and mental anguish  
\$63,336 Personal Injury: future physical pain and mental anguish

**Trial Information:**

**Judge:** R. H. Wallace

**Demand:** \$150,000 on the morning of trial

**Offer:** \$100,000

**Trial Length:** 2 days

**Trial Deliberations:** 3 hours

**Jury Vote:** 10-2

**Jury Composition:** 9 male/ 3 female; 3 are attorneys

**Editor's Comment:** This report is based on information that was provided by plaintiff's and defense counsel.